

REMARKS

The non-final Office Action issued March 25, 2004 has been reviewed and the comments of the U.S. Patent and Trademark Office have been considered. Claims 1, 11, 12, 15, 25, 26, 29 and 33 have been amended. Claims 9, 10, 14, 23, 24, 28 and 31 are withdrawn pursuant to a restriction requirement issued on October 2, 2003 and the final restriction requirement in the March 25, 2004 Office Action. Thus, applicants respectfully request reconsideration of pending claims 1-34.

Applicants thank the Examiner for indicating that claims 11-13, 25-27, and 33 would be allowable if rewritten into independent form. Claims 11, 12, 25, 26 and 33 have been so amended. Accordingly, claims 11-13, 25-27 and 33 are in condition for allowance.

The drawings stand objected to due to informalities in the reference numbers. Submitted herewith are proposed substitute formal drawings that address the informalities. Applicants respectfully request approval of the drawings and withdrawal of the objection.

Claims 1, 2, 5-8, 15, 16, 19-22, and 29 stand rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by U.S. Patent No. 6,314,942 to Kilgore et al. ("Kilgore"), and claims 1, 3-8, 15-22 and 29 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,845,621 to Robinson et al. ("Robinson"). Applicants respectfully submit that Kilgore fails to anticipate claims 1, 2, 5-8, 15, 16, 19-22, and 29 and Robinson fails to anticipate claims 1, 3-8, 15-22 and 29 because neither Kilgore nor Robinson teach or suggest each and every element of amended claims 1, 15, and 29.

Claims 1, 15 and 29 have each been amended to recite, among other features, a damper element "having a longitudinal damper element axis . . . , a first portion and a second portion, the first portion including a continuous surface having a series of undulations extending along the longitudinal damper element axis, and the second portion having a smooth surface extending along the longitudinal damper element axis so that the first and second portions are spaced from the longitudinal damper element axis." Support for the amendments to claims 1, 15 and 29 is provided by the originally filed application at, for example, paragraph numbers 16 and 17 and Figures 1-4B.

In contrast, Kilgore shows and describes, as noted by the Examiner, a tube with two surfaces: (i) an outer surface having undulations and (ii) either end pieces which acts to close the

tube. (See Office Action at 2). The “end piece” does not have, as recited in the amended claims, “a smooth surface extending along the longitudinal damper element axis so that the second portion is spaced from the longitudinal damper element axis.” Rather, the “end piece” of Kilgore extends perpendicular to the longitudinal axis of the tube. Robinson, in contrast to the amended claims, shows and describes, as noted by the Examiner, a corrugated surface and an integral end smooth surface in which both the corrugated surface and the end smooth surface extend perpendicular to the longitudinal axis. Because both Kilgore and Robinson fail to show or describe a damper element as recited in the claims, Kilgore and Robinson each fail to teach or suggest the claimed invention as a whole. Accordingly, claims 1, 15, and 29 are patentable over Kilgore and Robinson.

Claims 30, 32 and 34 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kilgore and Robinson. Notwithstanding the deficiencies in Kilgore and Robinson in relation to now amended claim 29, the Examiner concludes dependent claims 30, 32 and 34 are obvious based on either the needs or requirements of a particular system, i.e. “choice in design.” This legal basis however, fails to cure the deficiencies of Kilgore and Robinson as noted above. Accordingly, claims 30, 32 and 34 are patentable over Kilgore and Robinson.

CONCLUSION

In view of the foregoing amendments and remarks, applicants respectfully request the reconsideration and reexamination of this application and allowance of the pending claims 1-34. Applicants respectfully invite the Examiner to contact the undersigned at (202)739-5722 if there are any outstanding issues that can be resolved via a telephone conference.

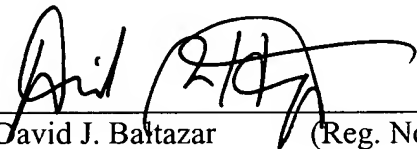
Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Date: June 24, 2004

By:


David J. Baltazar (Reg. No. 53,964)

Customer No. 009629
MORGAN LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, D.C. 20004
Tel No. 202.739.3000